

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6282 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

GHANSHYAMDAS SUKHRAMDAS

BHAMBHAI (SINDHI)

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/12/1999

ORAL JUDGEMENT

1. The petitioner was detained under the PASA by virtue of an order passed by the Commissioner of Police, Ahmedabad city, Ahmedabad, on 8th March 1999 under section 3[1] of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act', for short]. The grounds of detention indicate that the petitioner was involved in as many as 21 offences relating to the theft of scooters. Two

statements of anonymous witnesses were considered. The authority exercised powers u/s 9[2] of the PASA Act after recording subjective satisfaction for the purpose. It was also recorded in the grounds of detention by the detaining authority that the detainee was in custody. He had applied for bail and the Magistrarial Court had rejected the same. An application was preferred before the Sessions Court and the Sessions Court had also rejected the said application and since then, he is in custody, but he may approach the superior court, get bailed out and pursue his anti social and illegal activities and therefore, it was necessary to pass orders under the PASA Act.

2. By this petition under Article 226 of the Constitution of India, the petitioner challenges the order of detention mainly on the ground that he was in custody when the order was passed and there was no material with the detaining authority to apprehend preferring of bail application and grant of bail in respect of detainee. The detention is therefore vitiated and the petition may be allowed.

3. Mr. Prajapati, learned advocate appearing for Mr. M.N.Popat on behalf of the petitioner has restricted his arguments only on this ground.

4. Mr. H.H.Patel, learned AGP has opposed this petition. He submitted that the authorities have considered all relevant aspects and after being subjectively satisfied about the need, the order is passed.

5. It transpires from the grounds of detention that admittedly, the petitioner was in judicial custody when the order was passed and the application was preferred. It also appears considering the phraseology employed in the grounds of detention that the detaining authority had only anticipated application for bail by the petitioner and there was no material to arrive at a subjective satisfaction about the detainee being released on bail. In fact, the chances of preferring the bail and get bailed out by the petitioner were non-existent when the order was passed. In fact, bail applications were rejected by both the Magistrial Court as well as Sessions Court. The apprehension therefore had no basis. Therefore, in view of the principles laid down by the Supreme court in case of AIR 1989 SC 2265 in the case of Abdul Razak Abdul Wahab Shaikh v/s S.M. Sinha, Commissioner of Police, Ahmedabad, the order of detention stands vitiated.

6. The petition is therefore allowed. The impugned order of detention passed by the Commissioner of Police, Ahmedabad city, on 08th of March, 1999 in respect of the detenue Ghanshyamdas Sukhramdas Bhambhani [Sindhi], is hereby set aside. The detenue be set at liberty forthwith, if not required to be detained in custody for any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

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